

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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SMART DENTURE CONVERSIONS, LLC:	24-cv-507 JCB
	:
vs.	:
	:
STRAUMANN USA, LLC	:

TRANSCRIPT

Motion Hearing held before the
Honorable J. Campbell Barker, USDC
Judge held via teleconference on the 13th
day of November 2024 at 11:13 a.m.

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1 THE COURT: We're here this morning
2 for a hearing on the motion to dismiss in
3 case number 124 CV 507 in the District of
4 Delaware, Smart Denture Conversions versus
5 Straumann, U.S.A.

6 Can I have the counsel for the
7 parties make their appearances, please?

8 MR. CHAPMAN: In your courtroom,
9 Your Honor, Mark Chapman for defendant
10 Straumann.

11 THE COURT: Thank you.

12 MR. NIX: Good morning, Your Honor.
13 This is Kelsey Nix for the plaintiff and also
14 with me on the line are Delaware local
15 counsel Fred Cottrell from the Richards,
16 Layton, Finger firm and my colleague from
17 Smith Anderson and co-counsel, Hope Garber.

18 THE COURT: All right. Good morning
19 to you all.

20 MR. CHAPMAN: And, Your Honor, I
21 should add that my colleague, Georg
22 Reitboeck, is on the line, as well as our
23 local Delaware counsel, Nathan Hoeschen, of
24 Shaw Keller.

25 THE COURT: Good morning to you as

1 well.

2 Well, Mr. Chapman, since this is your
3 motion, would you like to begin with your
4 presentation?

5 MR. CHAPMAN: Certainly. Thank you.

6 May it please the Court. Defendant,
7 Straumann, has moved to dismiss plaintiff's
8 complaint under Rule 12(b)(6) because the
9 claims of the asserted patent are indefinite.

10 The claims are indefinite because
11 they're hybrid claims. They cover an
12 apparatus, a dental system, but they also
13 include a method step.

14 This method step requires a dentist
15 using the dental system to apply an axial
16 force during the procedure and this axial
17 force to release the temporary screw from the
18 abutment.

19 And because of this method step, it's
20 unclear whether infringement occurs when the
21 dental system is made or sold or only when
22 someone actually uses the dental system,
23 including applying this force that releases
24 the temporary screw. As a result, because of
25 that uncertainty, the claims are indefinite.

1 And what I wanted to do this morning
2 was this doctrine, this hybrid claim,
3 indefiniteness doctrine, is based on a line of
4 federal circuit cases, beginning with the IPXL
5 decision, and I wanted to briefly discuss the
6 case law and then look at the claim language
7 of the patent in this case.

8 So the take away from the cases is
9 that an apparatus claim is indefinite if it
10 includes a limitation that requires a user of
11 the apparatus to perform some action.

12 So, in IPXL, for example, the claims
13 were indefinite because the limitation
14 required a user of the electronic financial
15 transaction system to use the input means to
16 change the predicted transaction information
17 or accept the displayed transaction.

18 In the Katz case, the claims were
19 indefinite because they required a user, the
20 caller of the telephone interphase system, to
21 digitally enter data. And in the Hamilton
22 Beach case, which, of course, is a case from
23 the District of Delaware, the claims were
24 indefinite because they required a user to
25 insert brew baskets into the claimed average

1 brewing machine and to cause that machine to
2 heat the water.

3 Now, the plaintiff has cited cases
4 that hold that an apparatus claim is not
5 indefinite if the limitation merely describes
6 a capability or a configuration of the
7 apparatus as opposed to requiring a user to
8 perform an action.

9 So, for example, in the Master Mine
10 case which was prominently cited in the
11 plaintiff's opposition brief, the claims were
12 not indefinite because the limitation
13 described capabilities of the reporting module
14 of the software application; namely, that it
15 presents a set of user selectable database
16 fields that it receives from the user a
17 selection and that it generates a database
18 clearly.

19 Similarly, in the Ultimate Pointer
20 case the claims were not indefinite because
21 the limitation described the capability of the
22 image sensor of the handheld pointing device.

23 THE COURT: So, Mr. Chapman, can I
24 ask regarding the Master Mine case, is the
25 distinction you are drawing that the claim

1 language there had the subject of the verb,
2 the action verb being the reporting module
3 and it stated the reporting module receives
4 from the user certain information and you
5 think that the result would be different if
6 the claim language instead presented the user
7 as the subject and said the user provides.

8 So there is a difference between a
9 module, an inanimate object receiving
10 something, which was found there to be a
11 system or a capability and a user providing
12 the same thing which your argument falls on
13 the indefiniteness side of the line.

14 MR. CHAPMAN: Yes. I think if you
15 look at these cases and I was going to get to
16 the ultimate point here, but that is exactly
17 right.

18 I think when the claims are directed
19 to what the user has to do, the user has to
20 perform some action, they fall within the
21 scope of this doctrine and they are
22 indefinite. Indefinite.

23 We see that in IPXL. We see it in
24 Katz. We see it in Hamilton Beach.

25 On the other hand, if the claim is

1 describing what the machine is doing in
2 particular with respect to Master Mine, this
3 reporting module, then it is not indefinite
4 because you are just describing the capability
5 or configuration of the apparatus itself.

6 THE COURT: And do you think there
7 has been any drift in the federal circuit's
8 treatment of this issue over time because I
9 do notice that your primary cited cases are
10 from 2005, 2011 and 2011 again. Whereas, the
11 plaintiff is relying on Master Mine, which
12 was 2017, HTC, which was 2012 and Ultimate
13 Pointer, which was 2016, all of which come
14 after your cited cases.

15 Do you think there has been any
16 drift?

17 MR. CHAPMAN: I don't think that
18 there has been a drift. I think what matters
19 is what does the specific claim language at
20 issue say.

21 THE COURT: Do you have any cases
22 from 2012 onward where the federal circuit
23 found claim language indefinite because of
24 this distinction between the user or a human
25 being factor and a machine being the subject

1 of the verb?

2 MR. CHAPMAN: I think the latest
3 cases are the ones from 2011. I think it's
4 the Katz case and Rembrandt.

5 THE COURT: Right. And I see you
6 have some district court cases going that way
7 like the 2015 coffee machine or beverage
8 machine case.

9 Go ahead.

10 MR. CHAPMAN: That's fine. I
11 appreciate that.

12 I think where I was was I was just
13 making my way through the cases and I just
14 wanted to touch upon one more case which the
15 plaintiff cited and that is the Arthrodesis
16 case. Again, this is a case where the Court
17 found that the claims were not indefinite
18 because they fall on the side of the cases
19 where the limitation is merely describing how
20 the apparatus or component of it is
21 configured.

22 This is the one with the jig arm
23 component and the jig base component. Again,
24 if you look at the claim language is that
25 which will be positioned.

1 THE COURT: That seems like an easy
2 one because it's future tense, so if that is
3 not describing a capability that can never be
4 infringed.

5 MR. CHAPMAN: Correct. So,
6 obviously, the issue presented by this motion
7 is which side of the line do the claims in
8 this case fall.

9 And our submission is that claims are
10 indefinite because the limitation in this case
11 requires the user of the dental system to
12 perform an action; namely, the dentist who is
13 using the system has to apply the axial force
14 that causes the temporary screw to release
15 from the abutment.

16 And I will just turn to my first
17 slide here just to show you the claim language
18 from claim one.

19 Now, there is two independent claims
20 in the patent. Claim one and claim number
21 nine.

22 Claim one, as you see it, recites a
23 dental system comprising four components, an
24 implants abutment, a definitive screw, a
25 coping and a temporary screw.

1 And then at the end of the claim is
2 the limitation that's at issue in the motion.
3 And this limitation requires an axial force to
4 release the coping and the temporary screw
5 from the implant abutment. And it also states
6 that this axial force is from pick-up
7 processing.

8 Now, pick-up processing, if you read
9 the patent, it explains that that is the step
10 in the denture conversion procedure where the
11 dentist picks up the coping and the temporary
12 screw from the patient's jaw to remove them
13 from the abutment.

14 I'm just going to move to the next
15 slide to show you figures five and figure six.

16 So the claim language in these
17 figures, they are all in our brief, our
18 opening brief. Figure five you can see that
19 the temporary screw and the coping are
20 connected to the implant abutment prior to the
21 pick-up process, according to the
22 specification. And then after the pick-up
23 process, figure six shows the path of the
24 temporary screw and this embodiment and the
25 coping released from the implant abutment.

1 And you can see the two arrows show the force
2 that the dentist is applying, the axial force,
3 whether he or she is prying the denture off
4 the patient's jaw.

5 And then the next slide, again, this
6 is quoted in our opening brief, it's the
7 associated passage from the specification
8 which just repeats what I said, which is the
9 prosthesis and the coping and the temporary
10 screw cap are pulled off as shown by the
11 arrows in figure six.

12 So when the patent claim the first
13 two pick-up processing, this is the act of the
14 dentist picking up the coping which the
15 temporary screw is then released from the
16 abutment.

17 One more slide here on figure 75
18 which our understanding is this is the
19 embodiment of the patent that the patentee
20 tried to cover with claims in this patent.
21 Again, same idea that it is released from the
22 abutment with axial force. Again, it's the
23 dentist who is lifting this device off the
24 patient's jaw.

25 So our submission is when you get

1 back to this limitation in claim one, it
2 requires the dentist, the user of the system,
3 to perform an act. He or she has to apply an
4 axial force and that axial force has to
5 release the coping of the temporary screw from
6 the abutment.

7 And just very quickly, claim nine in
8 the next slide, this is the other independent
9 claim. Same basic structure. It's a dental
10 system with the same four components and then
11 you have this limitation at the end and,
12 again, the limitation requires an axial
13 pick-up force to release the temporary screw
14 post from the implant abutment.

15 And, again, it states that the axial
16 force is in response to -- the limitation
17 states that this axial force is in response to
18 and/or during pick-up processing.

19 So, again, just like claim one, our
20 submission is that claim nine requires the
21 user, the dentist, to use the system, apply
22 the axial force during pick-up processing and
23 that must release the temporary screw from the
24 abutment.

25 And I think the way we look at this,

1 these are not limitations that merely describe
2 a capability for a configuration of the screw.
3 It would have been fine for the patentee to
4 have drafted these limitations to have said,
5 you know, that this is capable of this or
6 configured to do this.

7 You know, a temporary screw capable
8 of being released upon the application of an
9 axial force, et cetera. Or a temporary screw
10 configured to release or a temporary screw
11 which will be released like in the Arthrodesis
12 case. But that's not the way the claim is
13 drafted.

14 And I think the take away from the
15 case law is, it really matters how the claim
16 is drafted. Here, the limitations are
17 directed to the action performed by the user
18 applying an axial force and the effect, the
19 result of that action, which is that the
20 temporary screw is released from the abutment.

21 THE COURT: All right. One big
22 picture question for you is about the
23 doctrine.

24 So, I understand the concept that if
25 one claim recites both apparatus and

1 functional language that the average reader
2 may not have clear notice about when the
3 infringement occurs and whether contributory
4 infringement standards apply which can involve
5 mens rea.

6 If I, as the Court, were to simply
7 construe -- construe these final limitations
8 in claim one and claim nine as apparatus
9 claims as part of claim construction, that can
10 be done now or at a later stage, would that
11 remove the ambiguity that you are arguing
12 exists because now I construed the claims and
13 that is claimed that res judicata, at least as
14 to you, and perhaps judicial estoppel against
15 the plaintiff if the plaintiff ever tries to
16 argue in another case that that's functional
17 language, it would have won this motion, but
18 arguing otherwise it would presumably be
19 estopped from ever denying that that is not
20 functional language.

21 So would that resolve the difficulty
22 or does that not matter because you have to
23 look at at the time the patent issued?

24 MR. CHAPMAN: I think -- I have a
25 two-fold response to that. First of all, the

1 patent owner who applies for the patent and
2 pursues it chooses the claim language and
3 there is many many cases that say that the
4 courts are not empowered to rewrite the claim
5 language except in various circumstances that
6 I don't think apply here. It's not like it's
7 a typo or it's obvious to one of ordinary
8 skill that they should have used a different
9 word.

10 And so I think the Court has to
11 decide based on the plain and ordinary meaning
12 of these words whether or not it comes within
13 the scope of this doctrine. To construe them
14 with the goal of avoiding the doctrine sounds
15 to me like an attempt to rewrite the claim
16 language, but I guess I don't fully know what
17 the construction would be.

18 I would also point out that, for what
19 it's worth, the plaintiff has not advocated
20 that you do that. They are relying on the
21 plain and ordinary meaning of the claim
22 language. Apart from this issue, they have
23 not identified any ambiguity or term that
24 needs to be construed.

25 THE COURT: Let me also ask you

1 about the District of Delaware's decision in
2 Acceleration Bay versus Activision Blizzard
3 which addressed a definiteness issue in the
4 district court, although the federal circuit
5 did not.

6 In that case, the claim recited a
7 computer network wherein an original --
8 originating participant sends data to other
9 participates and I gather that the participant
10 is a human participant. The verb then is
11 sends data.

12 Do you think that district court
13 decision was just wrongly decided? Again,
14 that's not precedential even within the
15 District of Delaware, but I'm just curious.

16 Do you think that was a correct
17 application of the doctrine or if you were
18 counsel you would have taken an appeal to
19 dispute that?

20 MR. CHAPMAN: Quickly looking at the
21 decision, Your Honor. My reaction is that it
22 was wrongly decided when you look at Katz and
23 IPXL. Those cases look like they are
24 directly on point because in both of those
25 cases you have humans being required to do

1 something under the claim language and that
2 appears to be the case in the Acceleration
3 Bay case if you are referring to term 38.

4 THE COURT: Yes. My last question
5 for you is: I notice that your motion and
6 briefing is not making anything out of the
7 fact that the title of the patent is a screw
8 attached pick-up dental coping system and
9 methods.

10 The abstract of the patent also says
11 in its first line, quote, a temporary
12 alignment system and methods.

13 Is there a reason you are not doing
14 something with the use of methods as part of
15 the description of the patent in the abstract
16 and the title? Perhaps those are not legally
17 recognizable and I just don't know that.

18 MR. CHAPMAN: I would say this: I
19 think it's interesting in informative context
20 here because this invention is all about this
21 procedure. Right. This is an apparatus
22 that's used in a dental procedure. And so
23 almost by definition, the description and as
24 we point out in our brief, the claim language
25 is all wrapped up in the method.

1 I don't think the fact that the title
2 in the abstract mentioned the method. I have
3 not seen a case that points to that as being
4 relevant under the case law, but it certainly
5 is consistent with the overall point of this
6 patent which is that it is a system for a
7 dentist to use in this procedure.

8 THE COURT: Okay.

9 MR. CHAPMAN: Your Honor, one more
10 thing we just wanted to point out is the
11 coffee maker case. Hamilton Beach.

12 I think this case is, again, I think
13 the claim language is important and you have
14 to really look at the claim language. I think
15 this is the case that's most analogous to our
16 case for two reasons.

17 One, even though it does not mention
18 the human in the claim, it does not talk about
19 or cite a user, the Court still found the
20 claims indefinite because when you read the
21 limitation -- and this is up on the slide --
22 it was clear that the claims require a human
23 to do something. Mainly insert these brew
24 baskets in to the machine.

25 In the very same way, we argue that

1 our claims or the claims of the plaintiff's
2 patent require a dentist to do something. To
3 apply this force and that has to cause the
4 temporary screw to be released from the
5 abutment.

6 So we think that case is instructive
7 because of the factual analogy.

8 THE COURT: All right. Very well.
9 Thank you, Mr. Chapman.

10 Mr. Nix, will you be arguing for the
11 plaintiff?

12 MR. NIX: Yes. I will. Thank you
13 very much, Your Honor.

14 THE COURT: All right. You may
15 proceed.

16 MR. NIX: Thank you. So let me
17 start by saying, first, we have a number of
18 cases that give us a number of important
19 principles to enable us to decide this issue.

20 One principle is that this hybrid
21 doctrine is a very narrow doctrine. It's, as
22 Your Honor I believe noted, it falls in
23 disfavor and it's a very limited case. In
24 essence, that's the way that Delaware
25 characterizes the doctrine.

1 Second, I would like to go back to
2 the Acceleration Bay case that you talked
3 about. That is a very important case that
4 talks about a couple of the principles that
5 would guide the analysis of the claim language
6 here which I will get to in a moment.

7 First, that case that even if the
8 claim refers to a user action, even so, it
9 assumes that there is a reference to a user
10 action, the claim can only be found indefinite
11 if it explicitly claims the act and not if it
12 claimed only the system's capability to
13 receive and respond to the user's action.

14 And the second point that the
15 Acceleration Bay case makes -- the second
16 point the case makes is that system and
17 apparatus claims are indefinite if they do
18 functional language that is not specifically
19 tied to structure, but instead appears in
20 isolation.

21 So what I would like to do, Your
22 Honor, is look at the claim language that's at
23 issue here in light of those two principles.

24 One, that if you can refer to user's
25 action because it's claiming the system's

1 capability to respond to the user's action.

2 And, second, functional language is
3 perfectly appropriate it is tied to the
4 structure.

5 So does Your Honor have available the
6 facts of claim one?

7 THE COURT: Yes. I'm looking at it.

8 MR. NIX: Excellent. I would like
9 you to look at claim one. Claim one is
10 directed to the dental system that includes
11 four components: The implant abutment, a
12 coping and two different screws. A
13 definitive screw and a temporary screw. The
14 definitive screw is the one that's inserted
15 later and makes the -- to proceed with a
16 permanent installment.

17 The temporary screw is the focus of
18 the motion. It's a very important part of the
19 invention as well.

20 The claim describes the temporary
21 screw with both physical limitations and with
22 functional limitations. So the impact, the
23 claim describes the temporary screw as having
24 an axis, a link, a width, a proximal head
25 portion. Proximal being here in the direction

1 away from the patient's jaw and a distal
2 portion that is in the direction towards the
3 patient's jaw. So those are six physical
4 limitations.

5 It also has two different functional
6 limitations.

7 First, wherein the temporary screw is
8 rotatable in the distal direction. That is
9 rotating in to or toward the patient's jaw to
10 engage the implant abutment.

11 The second functional limitation is
12 the focus of the motion which recites and
13 wherein an axial force in the proximal
14 direction that is along the trans axis and
15 away from the patient's jaw releases the
16 temporary screw and the coping.

17 Now, as you note, that limitation
18 does not recite or identify an actor who
19 either rotates the temporary screw or exerts
20 an axial force. Under the case law, that is
21 an indication that the limitation is a
22 functional limitation defining the capability
23 of the structure. Not a method step.

24 In fact, that is exactly what we have
25 here. These are functional limitations

1 defining the capabilities.

2 The screw, the temporary screw, is
3 designed and structured so they can perform
4 both functions. First, wherein it is
5 rotatable and, second, wherein an axial force
6 in a proximal direction, will release the
7 screw.

8 And claim nine describes a temporary
9 screw in a similar fashion where the male
10 thread on the temporary screw release from the
11 abutment thread in response to a, quote,
12 predetermined axial pick-up force in a
13 proximal direction.

14 Now, why did they claim this
15 temporary screw in that fashion using
16 functional limitation? We're all familiar
17 with using ordinary-type screws, put screws to
18 machine screw. Once you screw them in, they
19 ordinarily stay in place unless you unscrew
20 them. The temporary screws for this invention
21 are a little bit different because the claim
22 limitations in both claims nine and one recite
23 that they release in response to an axial
24 force in a proximal direction.

25 So what is important to take away --

1 one important take away from that claim
2 language is that the act of exerting the axial
3 force is not the key. The key is that the
4 temporary screw has a specific structure that
5 causes it to release in response to the axial
6 force.

7 A structure that satisfies this
8 functional limitation would also satisfy the
9 claim language. And we described in our
10 opposition brief where the specification is
11 not one or two, but multiple different
12 structures that perform that function.

13 It's widely accepted in patent claim
14 drafting to define a structure with a
15 functional limitation exactly as the inventors
16 did here. The inventors claim their temporary
17 screw with physical and functional
18 limitations. That is very proper.

19 And the functional limitation here is
20 tied to a specific structure, so we can look
21 at the cases and we can compare what claim and
22 earlier cases that did or did not pass muster
23 as to whether they're indefinite, but
24 ultimately what we have to focus on is the
25 specific claim language here.

And the test is whether they use the language in the claim has been read by a person of the ordinary skill in the art, that is the central professional, whether that person would have reasonable certainty as to the scope of the invention.

I submit to Your Honor that is simply not the case.

1 another case that these final two clauses of
2 the two claims are, in fact, process claims?

3 MR. NIX: I believe, Your Honor,
4 that it is certainly entitled at this stage
5 to make a claim construction of a limited
6 part of the claim that's required for you to
7 resolve the motion to dismiss as an issue of
8 law. And, you know, the plaintiff's position
9 is that those two limitations are, in fact,
10 functional limitations. They are not method
11 steps and that claims as a whole are
12 apparatus claims defining a dental system.

13 So, if that is Your Honor's claim
14 construction, there may be an opportunity to
15 appeal it or to challenge it later, but that
16 would be -- as I think you noted in discussion
17 with Straumann's counsel, that would be a
18 ruling for the Court for purposes of this
19 case.

20 THE COURT: Mr. Nix, let me ask you
21 the same question I asked Mr. Chapman about
22 the title of the patent, as well as the
23 abstract.

24 MR. NIX: Yes.

25 THE COURT: They both refer to a

1 system and methods describing both a product,
2 an apparatus, that being the system, and a
3 process that being a method.

4 As you know in patent law, a method
5 is the same as a process. So what am I
6 supposed to do with that and does that
7 actually help the defendant's argument that
8 your claims, as drafted, cover aspects of both
9 a system and a method?

10 MR. NIX: Your Honor, the use of the
11 word "method" in the claim of the abstract
12 and the description of method even in the
13 specification lends zero weight to
14 defendant's argument.

15 The determination of whether a claim
16 is a method or an apparatus is placed on
17 analyzing the claim itself. And, of course,
18 given that attorneys who draft patents will
19 include the word "method" and "apparatus"
20 routinely in applications by the party
21 abstract the descriptions and specification is
22 that that specification serves as a predicate
23 or basis for multiple sets of patent claims.

24 As it turns out, there is not a
25 method claim in this patent because it could

1 very well be continuation or divisional
2 applications that would be based on the same
3 specifications that would include claims
4 directed to methods, and so the fact that the
5 word "method" is used in the title and the
6 abstract does not indicate in any way that
7 they're method claims or that they are even a
8 method step in these claims.

9 THE COURT: All right. Let me ask
10 you to look at other parts of the
11 specification, not just the title and the
12 abstract. But at column seven, lines fifteen
13 through nineteen of that column seven it says
14 there, the systems and methods disclosed
15 herein can be used with prostheses for
16 attachment to both the upper and lower jaw.
17 So that's one reference to methods.

18 Similarly, at line six -- or excuse
19 me -- column six, lines 34 to 39, that
20 sentence also refers to, quote, the systems
21 and methods disclosed herein, end quote.

22 I think you would have to agree that
23 the federal circuit has held in Phillips that
24 the specification is the single best guide to
25 interpreting the claim language.

1 So what am I supposed to do with
2 those parts of the specifications saying that
3 the patent discloses systems and methods?

4 MR. NIX: The specification to the
5 patent is disputed in described methods, Your
6 Honor. But the claims that were allowed do
7 not claim methods. These are all apparatus
8 claims.

9 THE COURT: Okay.

10 MR. NIX: The specification would be
11 appropriate support for different set of
12 claims directed to the methods that are
13 disclosed in the patent, absolutely.

14 THE COURT: Sorry to interrupt you.
15 Just to paraphrase. You're saying the
16 specification discloses methods and maybe
17 that would support a continuation patent that
18 claims methods, but this patent claims only
19 products, even though it discloses products
20 and methods. That's what you are arguing?

21 MR. NIX: Yes. That's absolutely
22 right, Your Honor. As we talked about
23 before, some of these claims include
24 functional limitations which are still
25 apparatus claims.

1 THE COURT: Okay. And what do you
2 make of the plaintiff's reliance on cases
3 like IPXL and the Hamilton Beach case where
4 the claim either explicitly recites the user
5 doing something or implicitly uses a verb
6 without a clear subject but the implicit
7 subject is a human, like the brewing machine
8 being operated by a human? Do you think
9 those are still --

10 MR. NIX: Again, the cases are --
11 they define certain principles of law that
12 ultimately each case would rise or fall based
13 on the specific claim language in particular
14 cases which, as Your Honor knows, is true in
15 all cases.

16 But it really goes back to what I
17 started with in Acceleration Bay and you can
18 certainly have activities performed by a user
19 in an apparatus claim and it will not be
20 confusingly vague or confusingly indefinite to
21 one of ordinary skill in the art if it
22 explicitly -- the term indefinite only
23 explicitly claims the user's account as
24 opposed to claiming the system's capability to
25 respond to the user's actions.

1 Here in claim one it says, wherein an
2 axial force to have proximal direction to
3 loosen the coping of the temporary screw.
4 This claim is explicitly defining what the --
5 what the apparatus does in response to this
6 very particular force. It does not claim --
7 it does not claim the act itself. This is not
8 a method step in a sequence of steps to brew
9 coffee, for example, as in the coffee maker
10 case that defendant relies on where the claims
11 require the user to insert the brew baskets
12 into the brewing machine, place the filter
13 pack into the brewing reservoir, lift the lid
14 to permit water to be freely poured into a
15 water reservoir. Those are method steps.
16 That's a method claim. That is not our case.
17 Our case --

18 THE COURT: So, Mr. Nix, in that
19 case, why didn't your client draft this final
20 limitation to say, wherein the temporary
21 screw is such that an axial force, yada yada
22 yada? Why didn't they draft it to say the
23 screw is of this nature? Why didn't they
24 draft it to say, now I'm claiming an axial
25 force releases the coping?

1 MR. NIX: There are multiple ways
2 that patent attorneys can draft claims and
3 the question isn't to necessarily parse
4 exactly what the sequence reporting is. The
5 test is how would a dental professional read
6 and understand this entire claim starting
7 with the dental system comprising and going
8 all the way to the end.

9 And I submit to Your Honor that a
10 dental professional would have zero difficulty
11 understanding this claim is talking about
12 these four physical components: An abutment,
13 two screws and a coping. And the temporary
14 screw has its physical limitations and it has
15 the limitations defined by functional
16 limitations so that it's rotatable and that it
17 releases when an axial force and a proximate
18 force is applied to it.

19 THE COURT: Well, one point that --
20 I'm going to save this question for your
21 opposing counsel. All right. I think I have
22 your argument.

23 Did you want to summarize, Mr. Nix?

24 MR. NIX: Yes. Thank you, Your
25 Honor.

1 So, to summarize, I would say that
2 the cases give us the clear principles that I
3 have described. When we look at the actual
4 claim language, it is abundantly clear that
5 the challenge limitation is a functional
6 limitation. It is not a method step. And
7 that would then be a part of the analysis and
8 the end result analysis that we are
9 challenging the definiteness of this entire
10 claim under Section 112(b) and I submit that
11 claims one and nine properly construe, at
12 least inform those skilled in the art about
13 the scope of the invention with reasonable
14 certainty.

15 That's all the claim has to do is to
16 inform one skilled in the art about the scope
17 of the invention with reasonable certainty.

18 The flip side is they would have
19 to -- defendants would have to show that there
20 was a demonstrable confusion by a dental
21 professional reading this claim about what the
22 claims mean and when infringement occurs and I
23 submit to Your Honor that wherein an axial
24 force in a proximal direction releases the
25 coping of the temporary screw is abundantly

1 clear, crystal clear, to one in the ordinary
2 skill of the art and they would understand
3 that that is defining the multiple different
4 structures in the specification for how that
5 temporary screw would be configured to release
6 in response to that particular force.

7 Thank you, Your Honor.

8 THE COURT: Thank you, Mr. Nix.

9 Mr. Chapman, as you begin your reply
10 argument, I have two questions for you and
11 then I'll let you summarize as well.

12 On my first question, can I invite
13 you to look at claim nine in the patent?

14 MR. CHAPMAN: If I may, Your Honor,
15 if I could re-get control of the slides, I
16 can show it to the Court.

17 THE COURT: All right. So I'm
18 looking at claim nine and you are also
19 displaying it on the power point.

20 So the final clause here, the one
21 that you or your client is arguing makes this
22 claim indefinite refers to the threads of the
23 male threading of the post release from the
24 threads of the female threading of the
25 implants abutment with a predetermined axial

1 pick-up force in a proximal direction. Here
2 is the language I want to emphasize. In
3 response to and/or during pick-up processing.

4 Now, this claim does not separately
5 claim that there is pick-up processing
6 happening. That's not recited earlier, so
7 this final phrase of the wherein clause seems
8 to be using the future tense in the same way
9 that the future tense was used in the
10 Arthrodesis versus Wright Medical case that
11 the District of Delaware held was definite.

12 What do you have to say to that idea?

13 MR. CHAPMAN: I don't think I agree
14 with you that it's expressing this in the
15 future tense. The verb "release" which is
16 the active verb is present tense and the
17 parties -- the verb release is the active
18 verb in this clause and it is stated to be in
19 the present tense.

20 And then I would say the last clause
21 that you pointed out to, the one that says,
22 "in response to and/or during pick-up
23 processing" is describing when this is
24 happening, but I don't agree that it is
25 stating it in a way that it is happening in

1 the future.

2 I think, in fact, it reinforces our
3 point here, which is that the axial pick-up
4 force is applied by the user during pick-up
5 processing and that causes the thread of the
6 temporary screw to release, so you have an
7 action by the user and it's causing something
8 to happen and that's what the release clause
9 is directed to.

10 THE COURT: All right. Let me then
11 ask my second question and invite you to look
12 at claim one in the final clause of claim
13 one.

14 So I think the plaintiff is arguing
15 that everything after wherein is a functional
16 limitation. I noticed in the patent that this
17 final wherein clause is not indented
18 separately. This is true of claim nine as
19 well. There is, as far as the indentation of
20 the patent goes, there is one indent for the
21 first wherein and the second wherein in terms
22 of purely formatting of this document is
23 contained within the same level of indentation
24 as the entirety of the first wherein clause.

25 Is that at least some visual cue that

1 the drafter was treating the axial force
2 clause as a further refinement of the
3 rotatable clause since they're both at the
4 same level of indentation and then the reader
5 would use that visual cue to understand that
6 both of those clauses are modifications of the
7 temporary screw?

8 MR. CHAPMAN: No. The first part of
9 that wherein clause actually uses claim
10 language that would not be indefinite for
11 this reason, because it's describing
12 capability, the thread -- I'm sorry. The
13 temporary screw is rotatable. That describes
14 the characteristic of the temporary screw, a
15 functional characteristic.

16 This clause that we're focused on
17 describes a different step in the procedure.
18 A rotatable characteristic of the temporary
19 screw is relevant to the fact that it can be
20 inserted by the dentist at an earlier stage in
21 the procedure using effectively a screwdriver
22 to rotate the threads.

23 This last limitation that we are
24 looking at is directed to a subsequent step
25 where the dentist is pulling it out. He's not

1 unscrewing it. He's pulling it out.

2 So I don't think formatting matters,
3 to be blunt.

4 THE COURT: All right. Well, then,
5 let me give you a chance to just briefly
6 reply to the plaintiff's argument.

7 MR. CHAPMAN: Certainly. I heard
8 counsel for the plaintiff say a couple things
9 that I just wanted to briefly respond to.

10 One was, he invoked the classic
11 definiteness standard which is, is the claim
12 language reasonably clear to one of ordinary
13 skill in the art.

14 I don't dispute that that's the
15 general standard for definiteness, but this
16 doctrine is a little bit unusual because it's
17 not focused on whether the claim language is
18 ambiguous or vague in a technical sense. It's
19 focused on whether you have an apparatus claim
20 which is one statutory class of a patentable
21 invention mixed up with a method step and
22 methods, of course, are a totally separate
23 statutory class of patentable invention under
24 Section 101.

25 And because they are different

1 classes, the way you look at infringement
2 issues and what constitutes an active
3 infringement is different for an apparatus
4 than for a method. And I think Your Honor
5 alluded earlier that you can get into issues
6 of whether there is contributory infringement
7 and the knowledge requirement that goes along
8 with that.

9 So the focus here is not so much on
10 what one of ordinary skill look at the claims
11 and glean from them as a technical matter, so
12 much as a matter of law, does the claim mix
13 two different statutory classes of invention.
14 And I think that's an important principle to
15 keep in mind when you are looking at this.

16 The second point I just wanted to
17 make clear -- and this goes back to the
18 Acceleration Bay case, the federal circuit has
19 not stated that you need to expressly recite a
20 user in the claim for this doctrine to apply.

21 In the Master Mine case and other
22 cases they have distinguished Katz and IPXL on
23 that ground, but I'm not aware of any holding
24 that this doctrine -- that the claim language
25 has to expressly recite a user. In fact, the

1 Hamilton Beach case that you pointed to
2 demonstrates that.

3 If you look at the claims in Hamilton
4 Beach, which I put back up on the screen, they
5 don't recite the user of the beverage brewing
6 system. It's just clear. It's implicit, if
7 you will, that the user of the brewing system
8 is the one doing the inserting. And we would
9 argue that the claims in this case are just
10 like that. It's clear. There is no dispute
11 about this, that it is the dentist who is
12 using the dental system who applies this axial
13 force and that that causes the temporary screw
14 to release.

15 So I just wanted to make sure that
16 there was no suggestion that you had to
17 expressly recite the user in the claim
18 language.

19 I don't have anything further, unless
20 Your Honor has any questions.

21 THE COURT: All right. Very well.
22 Thank you, Mr. Chapman. Thank you, Mr. Nix.
23 And thank you to all involved with this
24 hearing for your flexibility to handle it by
25 telephone with all the mechanical and

1 logistical challenges that involves. I
2 appreciate that as well.

3 With that, the motion is on
4 submission and Court is adjourned.

5 (At 12:04 p.m. proceedings were
6 concluded.)

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I, KIMBERLY A. BURSNER, Registered Professional Reporter, do hereby certify that the foregoing is an accurate transcript of the proceedings, as reported by me, in the case herein stated, and that I am neither counsel nor kin to any party or participant in said action, nor interested in the outcome thereof.

Kimberly A. Bursner
Registered Professional
Reporter

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